

June 22, 2004

PUBLIC UTILITIES COMMISSION
Small Generator Aggregation
(Chapter 315)

NOTICE OF RULEMAKING

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to establish requirements for standard offer providers to purchase the electricity from small generators.

II. BACKGROUND

During its last session, the Legislature enacted An Act To Facilitate the Development of Cost-Effective Distributed Electricity Generation in the State. P.L. 2003, ch. 555 (Act) (to be codified at 35-A M.R.S.A. § 3210-A). The Act requires the Commission by rule¹ to require standard offer providers to purchase the output of small generators (defined as facilities with a capacity of 5 MW or less) in a manner that is financially neutral to the providers. The Act also requires transmission and distribution (T&D) utilities to administer the sale of electricity from the generator to the standard offer provider and to charge the cost of administration to the generator.

The Act resulted from comments made by the Commission in two recent reports to the Legislature.² In those reports, the Commission stated that small generators, simply by virtue of their size, face unique difficulties in accessing the competitive wholesale market. These difficulties include the general unwillingness of electricity marketers to purchase from small generators due to the administrative costs associated with contracting with a number of small facilities that provide little volume and the high cost for small generators to sell directly into the ISO-NE market. As a result, the Commission recommended that the Legislature adopt provisions similar to those

¹ Pursuant to the Act, these rules are routine technical rules as defined in 5 M.R.S.A. § 8071.

² *Report and Recommendations on the Promotion of Renewable Resources*, December 31, 2003; *Distributed Generation: Conclusions and Recommendations*, October 2001. These reports may be obtained from the Commission's website: [www.state.me.us/mpuc/2004 legislation/2004 legislation.htm](http://www.state.me.us/mpuc/2004%20legislation/2004%20legislation.htm). Click on Reports to the Legislature under the appropriate year.

contained in the Act to address what it considered to be an unreasonable market barrier for small generators.

III. DISCUSSION OF RULE PROVISIONS

A. Purpose (Section 1)

The proposed rule describes the purpose of the Chapter as ensuring that small generators have reasonable access to the regional wholesale market.

B. Definitions (Section 2)

Section 2 contains definitions of terms used throughout the proposed rule. The definitions are self-explanatory.

C. Purchase Obligation (Section 3)

Consistent with the provisions of the Act, the proposed rule requires specified standard offer providers to purchase the output of generators with a capacity of 5 MW or less at a price that is financially neutral to the provider. The purchase requirement is at the option of the generator and applies only to entities operating in the ISO-NE control area. The ISO-NE control area has a market structure that would allow for a financially neutral transaction in that there is a market clearing price. Thus, a standard offer provider would be financially neutral in purchasing the output of a small generator at the applicable market clearing prices (i.e. the prices for the Maine Load Zone) in that the clearing price represents the value of the power at a point in time. Accordingly, the proposed rule specifies that the purchase price will be the market clearing price for the Maine Load Zone. We ask for comments on whether the rule should specify the real-time or day-ahead prices.

The northern Maine market currently does not have a structure that produces market clearing prices. As a result, there does not appear to be a mechanism for a small generator purchase requirement to exist in northern Maine in a manner that would be financially neutral to a standard offer provider. Thus, the purchase requirements of the Chapter do not apply to entities in northern Maine. However, the proposed rule does specify that, if the Commission finds that the market structure in northern Maine can accommodate transactions in a financially neutral manner, the purchase requirement of the Chapter will become applicable to northern Maine.

The proposed rule specifies that it is the standard offer provider for residential customers that has the small generator purchase obligation. Each investor-owned utility has three standard offer classes. Thus, it is necessary for the rule to designate the particular provider that has the purchase obligation. The proposed rule designates the provider to the residential class because the administration of the small generator purchase and sale will be similar to that which currently occurs with net billing customers. Because net billing customers are almost exclusively residential customers,

the residential standard offer provider will already be accommodating similar transactions administered by the T&D utility. It would appear to be efficient for the same entities to also have the responsibility for similar transactions involving small generator sales, because it would minimize the overall administrative costs and cause the least disruption to the existing market procedures.

Finally, section 3 of the proposed rule states that if there are multiple standard offer providers serving residential customers within a T&D service territory, the purchase obligation will be apportioned according to each provider's share of the standard offer load.

D. Administration (Section 4)

As specified in the Act, the proposed rule requires the T&D utilities to administer the sale of power from small generators to standard offer providers.³ The intent of this provision is to mirror the process currently used to administer net billing transactions and to minimize the burden on standard offer providers so as not to make it undesirable for providers to bid to provide standard offer service. Also as specified in the Act, the proposed rule requires the generator to pay the costs of utility administration. This will be accomplished pursuant to a Commission-approved rate schedule.

E. Financial Neutrality (Section 5)

Consistent with a fundamental aspect of the Act, the proposed rule states that the Commission shall suspend the operation of the Chapter if it finds the purchase requirement cannot be accomplished in a manner that is financially neutral to the standard offer provider.

F. Net Energy Billing (Section 6)

Section 6 of the proposed rule states that net billing customers may elect to sell their excess generation into the market pursuant to the small generator aggregation rule, rather than "banking" the excess as a credit against future usage as permitted under our net billing rule (Chapter 313).⁴ As a general matter, it would appear to be more economic for a net billing customer to use excess generation as a credit against future usage, but we are aware of no reason why such a customer should not have the option of selling monthly excess generation into the wholesale market.

³ The T&D utilities would not buy, sell, or own the electricity.

⁴ Chapter 313 of the Commission's rules establishes the terms and applicability of net billing in Maine. Under Chapter 313, net billing is available to customers who generate electricity primarily for themselves using renewable generation that does not exceed 100 KW.

G. Waiver (Section 7)

This section of the proposed rule contains the Commission's standard language for waivers of provisions of the rule provided that the waiver is not inconsistent with the Rule's purposes or with statutory provisions.

H. Comments

We solicit comments on all aspects of the proposed rule. In particular, we ask for comment on whether there will need to be a contract between the generator and the standard offer provider or between the generator and the T&D utility. If a contract is required in either case, should the rule require that a standard contract be developed and filed with the Commission?

We also ask for comment on whether the rule should require that NEPOOL Generation Information System (GIS) certificates be transferred from the eligible generator to the standard offer provider as part of the sale transaction or whether the eligible generator should retain the ability to transfer certificates to other parties for whatever value they may have in the market.

IV. RULEMAKING PROVISIONS

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. No public hearing on this matter has been scheduled. The Commission will schedule a public hearing if requested by 5 or more interested persons. Written comments on the proposed Rule may be filed with the Administrative Director until August 4, 2004. Written comments should refer to the docket number of this proceeding, Docket No. 2004-396 and be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

O R D E R

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

- a. All transmission and distribution utilities in the State;
- b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

- c. All licensed competitive electricity providers;
- 2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached proposed rule to:
 - a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
 - b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 22nd day of June, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.